

ORIGINAL

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

In the Matter of ) MM Docket No. \_\_\_\_\_  
 ) RM- \_\_\_\_\_  
Amendment of Section 73.202(b) )  
(Table of Allotments) )  
FM Broadcast Stations )  
 )  
Princeville and Kalaheo, Hawaii )

To: Chief, Mass Media Bureau  
Policy and Rules Division  
Allocations Branch

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**PETITION FOR RULE MAKING**

The B&GRS Partnership ("B&GRS"), permittee of KAYI(FM), Princeville, Hawaii, by its attorneys, and pursuant to Section 1.420(i) of the Commission's Rules, hereby respectfully requests the Commission to amend Section 73.202(b) of the Rules to (a) delete Channel 260C1 from Princeville, Hawaii; (b) add Channel 260C1 to Kalaheo, Hawaii; and (c) modify the construction permit for KAYI, Princeville, Hawaii, to specify "Kalaheo, Hawaii" as the Station's community of license. In support whereof, the following is shown:

**Background**

1. KAYI is authorized to operate on Channel 260C1 at Princeville, Hawaii, pursuant to a construction permit (File No. BAPH-980513EA). KAYI has not yet begun program tests. B&GRS requests the Commission to delete Channel 260C1 from Princeville and reallocate it to Kalaheo, Hawaii, with a concurrent modification of the construction permit of KAYI to operate on Channel 260C1 at Kalaheo, Hawaii. This

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change is permissible under Section 1.420(i) of the Rules, which authorizes the Commission to modify the construction permit of an FM station to specify a new community of license where the amended allotment would be mutually exclusive with the construction permit's present allotment.

2. Two factors must be demonstrated in order to change a station's city of construction permit in a rule making proceeding: (1) the channel changes must be mutually exclusive, and (2) the rule making must not deprive a community of an existing service representing its only local transmission service. The Commission stated that in making the determination of whether to amend the Table of Assignments it would "take into account the totality of the service improvements resulting from a proposed change in community of construction permit in determining whether an allotment proposal should be approved." *See Modification of FM and TV Authorizations (New Community of Construction permit)*, 4 FCC Rcd 4870 [66 RR 2d 877] (1989). B&GRS's proposal is consistent with the rules and Commission policies, i.e., the channel changes are mutually exclusive, and the rule making will not deprive Princeville of its only local transmission service.<sup>1</sup>

### **Expression of Continuing Interest**

3. If the Commission allots Channel 260C1 to Kalaheo, B&GRS or its successor will promptly file an application for a minor change construction permit to operate KAYI at Kalaheo, and upon grant, will promptly construct and operate the facilities.

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<sup>1</sup> On September 18, 1998, Vetter Communications Co., Inc., filed a "Petition for Rule Making" seeking to reallocate Channel 255C1 from Princeville to Kapaa, Hawaii, and modify the construction permit of KAWT(FM), Princeville, to operate at Kapaa. See ¶5, *infra*, for a discussion of this Petition.

4. Attachment A is a Technical Exhibit, which is incorporated herein by reference, that provides the Commission with technical information about the proposed Princeville/Kalaheo channel exchange.

Princeville, Hawaii

5. As stated in the Technical Exhibit, Princeville had a 1990 population of 1,244. Channel 255C1 is allotted to Princeville, and Vetter Communications Co., Inc., holds a construction permit to operate on that channel as KAWT. The permittee of KAWT on September 18, 1998, filed a Petition for Rule Making to reallocate Channel 255C1 to Kapaa, Hawaii. Therefore, if the KAWT petition is granted and this petition is granted, Princeville will have no local station assigned to it. However, as neither KAWT nor KAYI have ever provided service to the residents of Princeville, the Commission's concern as to depriving Princeville of its only transmission service does not present the same concerns with loss of service that would be represented by the removal of an operating station, as it does not represent a service that the public has become reliant upon. See *Hague, New York, and Addison, Vermont*, DA 98-2213, released October 30, 1998, *Chatom and Grove Hill, Alabama*, 12 FCC Rcd 7664 (1997), *Sanibel and San Carlos Park, Florida*, 10 FCC Rcd 7215 (1995); *Pawley's Island and Atlantic Beach, South Carolina*, 8 FCC Rcd 8657 (1993); and *Glencoe and LeSueur, Minnesota*, 7 FCC Rcd 7651 (1992). B&GRS has attempted to construct KAYI, but because of the limited number of transmitter sites available, cannot construct on the authorized site. The only site that is available is terrain obstructed such that KAYI would not place line-of-site citygrade service into Princeville. Thus, a change to a site that will comply with the Commission's policies on siting requires a change in community of license. The public

interest is therefore served by the grant of this Petition since otherwise KAYI could not be able to being operations.

#### Kalaheo, Hawaii

6. Kalaheo, Hawaii, a census designated place, had a 1990 population of 3,592. Kalaheo is located in the Eleele-Kalaheo division of Kauai County. KAYI would bring first local service to Kalaheo, since Kalaheo currently does not have a local station. Kalaheo is not located in an Urbanized Area. "Yahoo" Yellow Pages shows that Kalaheo has, a fire station, a correctional institution, a service station, a post office, two child care centers, four churches, seven bed and breakfasts, 1 car rental business, two pharmacies and drug stores, and a grocery store (Mini Mart), two garbage removal services, one clothing manufacturer, three appliance stores, two law firms, one insurance company, one tax preparer, one money management business, a golf course, five boating businesses, one art museum, two video rental stores, one appliance store, one botanical garden, one bar/club, seven restaurants, eleven health care providers (doctors and dentists and clinics), one satellite TV provider, and two home improvement retailers. Therefore, Kahaleo has the requisite indicia to be a community for allotment purposes.

#### **Public Interest Considerations**

7. Since Princeville currently has no existing local service, B&GRS's proposal will not deprive Princeville of its only local transmission, as discussed above.

8. As shown in the attached Technical Exhibit, Kalaheo would be entirely covered by a 70 dBu or better signal from KAYI. Thus, modification of the construction permit for KAYI would be consistent with the Commission's city-grade contour coverage requirements.

9. The Commission's priorities for assigning FM allotments are set out in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 [51 RR 2d 807] (1982). They are: (1) first aural service, (2) second aural service, (3) first local service, and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). Here, first local service to Kalaheo is preferred to first local service to the smaller community of Princeville. Thus, there would a preferential arrangement of allotments resulting from the allotment of Channel 260C1 to Kalaheo.

WHEREFORE, B&GRS respectfully requests the Commission to amend Section 73.202(b) of the Commission's Rules, as follows:

Hawaii

	<u>Present</u>	<u>Proposed</u>
Princeville	255C1, 260C1	255C1
Kalaheo	----	260C1

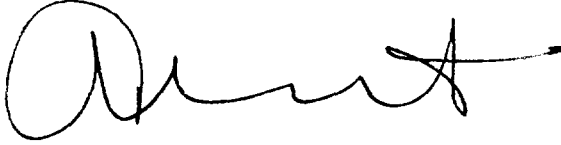
**Conclusion**

B&GRS requests the Commission to (a) allot Channel 260C1 to Kalaheo, Hawaii, and (b) modify the construction permit of KAYI to operate on FM Channel 260C1 at Kalaheo, Hawaii. As stated supra, if the FCC modifies the construction permit of KAYI to operate on Channel 260C1 at Kalaheo, B&GRS or its successor will timely file an

application for minor change construction permit to operate KAYI at Kalaheo, and upon grant thereof, B&GRS or its successor will construct the new facilities and operate them.

Respectfully submitted,

**THE B&GRS PARTNERSHIP**

By:   
\_\_\_\_\_  
Gary S. Smithwick  
Its Attorney

**SMITHWICK & BELENDIUK, P.C.**

1990 M Street, N.W.

Suite 510

Washington, D.C. 20036

(202) 785-2800

November 12, 1998

**Technical Comments**  
**In Support of the Addition of**  
**Channel 260C1 at**  
**Kalaheo, Hawaii**  
**September, 1998**

These Technical Comments are being filed on behalf of The B&GRS Partnership (hereinafter referred to as "B&GRS"), permittee of KAYI, Princeville, Hawaii. B&GRS hereby seeks to re-allocate Channel 260 C1 from Princeville to Kalaheo, Hawaii.

B&GRS recently purchased the KAYI Construction Permit at Princeville. It was later determined that the currently authorized site is no longer able to accommodate the KAYI antenna. On a trip to Princeville and the Island of Kauai it was learned of the fierce local opposition to any new tower construction on the island. In fact, the owner of one newly authorized tower is under the threat of suit from island residents who are able to see the newly erected structure from their home. Because of this local opposition to new towers, this requested rule making seeks to change the city of license to a city that can be served from one or more existing tower structures. To the knowledge of the petitioner, no existing tower structure is available that would allow city grade service to Princeville, Hawaii.

**ALLOCATION**

The allocation reference of North Latitude 21° 59' 54" and West Longitude 159° 25' 35" clears all Class C1 §73.207 allocation constraints (See Exhibit #1). This hypothetical site is the existing tower for KFMN Radio Station.

### CITY GRADE COVERAGE

This proposal will serve 100% of Kalaheo, Hawaii with the 3.16 mV/m city grade contour. Exhibit #2 is drawn to illustrate that coverage. This exhibit utilizes the same center of radiation above mean sea level as the existing KFMN to calculate this coverage. It is doubtful that environmental interests would allow a structure tall enough to produce a class maximum height above average terrain.

### PRINCEVILLE, HAWAII

Although Channel 260 C1 at Princeville is requesting to be deleted, Princeville still has allocated Channel 255 C1. Exhibit #3 is a \$73.207 spacing study indicating that another Class C1 equivalent channel is available should anyone voice an interest in providing Princeville with FM service. Any new Princeville applicant will encounter the same tower obstacles as the B&GRS. Because service to Princeville has never been instituted, the deletion of 260C1 will cause no loss of service.

### KALAHEO, HAWAII

Just as Princeville, Kalaheo is also a Census Designated Place on the Hawaiian Island of Kauai. It is located in the Eleele-Kalaheo division of Kauai County and has a 1990 population of 3,592 persons.<sup>1</sup> Kalaheo is not in an

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<sup>1</sup> This is far greater than the 1,244 population of Princeville .



urbanized area. Channel 260 C1 would be the first broadcast service allocated to this community.

### REQUEST

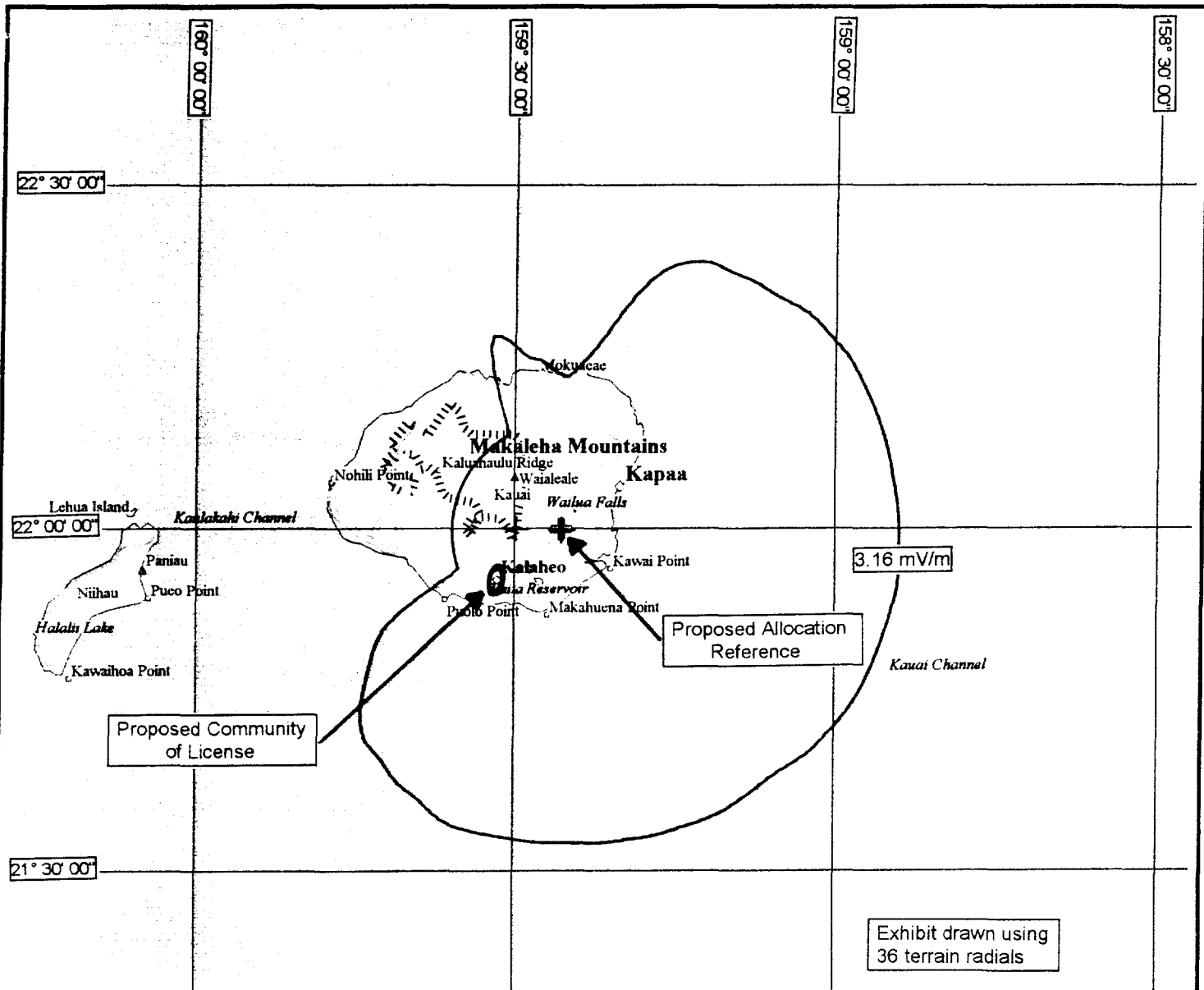
The following changes of §73.202 are requested:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Princeville	255C1, 260C1	255C1
Kalaheo	None	260C1

All information contained herein is true and accurate to the knowledge of the undersigned.

  
\_\_\_\_\_  
Clifton G. Moor  
Bromo Communications, Inc.

September 24, 1998



### City Grade Coverage

Proposed Allotment Reference:  
 21° 59' 54" North Latitude  
 159° 25' 35" West Longitude

Map is State of Hawaii  
 Islands of Kauai and Niihau  
 Scale 1:1,000,000  
 ©1993 DeLorme Mapping

**EXHIBIT #2**  
**Technical Comments**  
 In Support of the Addition of  
 Channel 260C1 at  
 Kalaheo, Hawaii  
 September 1998

**BROMO** BROADCAST  
 TECHNICAL CONSULTANTS  
**COMMUNICATIONS**

BROMO COMMUNICATIONS INC  
(706) 782-7222 - (202) 429-0600

Alternate Channel  
Princeville, Hawaii

REFERENCE  
22 13 30 N  
159 24 13 W

CLASS C1  
Current rules spacings  
CHANNEL 297 -107.3 MHz

DISPLAY DATES  
DATA 09-19-98  
SEARCH 09-24-19

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
KGMZ	300C	Aiea	HI	124.2	162.96	105.0	57.96
LI DEN	21 23 51	158 06 01	100.000 kW	599M	101.3	65.3	
	KTSS-FM, Inc.				BLH920828KG		

Alternate Princeville Channel

**EXHIBIT #3**  
**Technical Comments**  
In Support of the Addition of  
Channel 260C1 at  
Kalaheo, Hawaii  
September 1998

**BROMO** BROADCAST  
COMMUNICATIONS TECHNICAL CONSULTANTS